

APPENDIX.

District Court's Findings of Fact (R. 118-124), Together With Supporting Record References.

1. Plaintiff is now, and for more than 38 years last past has been, a railroad corporation organized under the laws of the State of Illinois, authorized to carry on said business in the State of Missouri, with lines of railroad extending in and through the State of Missouri and other states (R. 38-39).

2. North Kansas City Development Company is, and since March 9, 1903 has been, a corporation organized under the laws of the State of Missouri relating to manufacturing and business corporations (R. 39-40, 42; Pl. Ex. 10, R. 329-332; Def. Ex. 4A, R. 839 at 840).

3. North Kansas City Land and Improvement Association is, and since June 27, 1898, has been, a corporation organized under the laws of the State of Missouri relating to manufacturing and business corporations (R. 39-40, 45, 325-329).

4. Articles of Association of Union Depot, Bridge and Terminal Railroad Company were filed and recorded in the office of the Secretary of State of the State of Missouri on May 10, 1901, under Article 2 of Chapter 12 of the Revised Statutes of Missouri of 1899, (now Chapter 32, Article 2, of the Revised Statutes of Missouri of 1929) and Acts amendatory thereto relating to railroad corporations (R. 43; Pl. Ex. 4, R. 269 at 270).

5. Said Union Depot, Bridge and Terminal Railroad Company did not, within two years after its Articles of Association were filed and recorded as aforesaid, begin the construction of any part of the railroads or

facilities described in its Articles of Association (Def. Ex. 9, R. 659 at 747-752, 757; R. 290-292, 296, 283).

6. Said Union Depot, Bridge and Terminal Railroad Company did not, within three years after filing its Articles of Association, expend not less than ten percent on the amount of its capital, or any sum, on any of the roads or facilities described in its Articles of Association, or on the construction thereof, or on or in the construction of any railroad (Bridge Co. capital stock was \$8,000,000, R. 275; none of the railroad tracks described in the Bridge Co.'s charter were ever built, R. 292, 296; Def. Ex. 9, R. 659 at 747-752; construction of the bridge was not begun until 1909, R. 292, 286; Def. Ex. 9, R. 659 at 751-752).

7. Said Union Depot, Bridge and Terminal Railroad Company did not finish and put in operation, within 10 years from the time of filing its Articles of Association, any of the railroads or facilities described therein (R. 290-292, 296, 283; Def. Ex. 9, R. 659 at 747-752, 757).

8. The Union Depot, Bridge and Terminal Railroad Company began the construction of a double-deck bridge across the Missouri River in 1909, with the view to making the lower deck thereof a railroad bridge and the upper deck a bridge for the use of pedestrians and vehicles (Def. Ex. 9, R. 659 at 752; R. 286, 292). Neither deck of said bridge was completed until on or after December 28, 1911 (R. 292, 286). The upper deck of said bridge was first opened, to use and operation by pedestrians and vehicles, in January, 1912 (R. 292).

9. Two railroad tracks were constructed on the lower deck of said bridge in December, 1911 (R. 292-293), but no locomotives, trains, or cars were run over said tracks until October, 1920 (R. 293). Said tracks on said bridge were not connected with other tracks at either end of said bridge until October, 1920, at which time operation was first begun thereover by Missouri Pacific Railroad Company (R. 293).

10. Said bridge was not constructed, and has never been used for the purpose of complying with any of the provisions of the Articles of Association of Union Depot, Bridge and Terminal Railroad Company (Def. Ex. 9, R. 747-752, 757; R. 292-293, 285-286, 282-283, 296).

11. The plaintiff is a citizen and resident of the State of Illinois. The defendants, North Kansas City Development Company, North Kansas City Land and Improvement Association, Hugh J. Curran, Frederick W. Fratt, and Clara M. Fratt are all citizens and residents of the State of Missouri and of the Western Division of the Western District thereof. Prior to its dissolution, Union Depot, Bridge and Terminal Railroad Company (afterwards called North Kansas City Bridge and Railroad Company) was a citizen and resident of the State of Missouri. The amount in controversy in this action, exclusive of interest and costs, exceeds the sum and value of three thousand dollars (R. 2, 34-39).

12. The North Kansas City Industrial District in Clay County, Missouri, lies within an angle, formed by the convergence of plaintiff's Kansas City-Omaha and plaintiff's Kansas City-Chicago main lines of railroad. The Kansas City-Omaha line bounds the westerly side and the Kansas City-Chicago line bounds the southerly and easterly sides of said Industrial District (R. 255-256, Pl. Ex. 1, R. 263). All the lands, right of ways and tracks sought to be condemned in this cause lie within said angle and immediately adjacent to plaintiff's said main lines of railroad (Pl. Ex. 1, R. 263; R. 256-262, 293-294).

13. North Kansas City Development Company and North Kansas City Land and Improvement Association were incorporated for the purpose of owning, holding, and selling real estate in Clay and Jackson Counties, Missouri, and, particularly, for the development of said industrial district (R. 39-40, 42, 45, 326-335, 434-435).

Prior to the development of said industrial district, said real estate companies owned nearly all the land described and referred to as the North Kansas City Industrial District (R. 40). At said time said real estate companies were, ever since have been, and still are, engaged in selling industrial and factory sites in said district and in the development thereof (R. 40, 285-286; Def. Ex. 9, R. 659 at 754-755). Said real estate companies have sold or leased all, or substantially all, of the land now occupied by industries located in said industrial district (R. 40). Pursuant to said development program, and in order to induce prospective purchasers and lessees to purchase or lease industrial and factory sites in said industrial district, said real estate companies have, by contracts of sale, covenants in deeds, and other agreements, undertaken and agreed with the purchasers or lessees of property in said industrial district, to construct or cause to be constructed, and to operate or cause to be operated, and to maintain or cause to be maintained at the expense of said real estate companies, lead tracks and through switching tracks, connecting with industry tracks, for the purpose of switching cars to and from said industries (R. 3, 40, 45, 434-435, 293, 418; Def. Ex. 9, R. 659 at 779, 765-766, 954; Pl. Ex. 16, R. 406 at 410-412; Pl. Ex. 11, R. 335 at 349; Pl. Ex. 13, R. 360 at 368; Pl. Ex. 15, R. 385 at 395).

14. North Kansas City Development Company constructed the tracks sought to be condemned on the right of ways sought to be condemned (R. 293-294; Ex. 16, R. 405 at 409-412; Def. Ex. 9, R. 659 at 790 and 792; R. 447-449).

15. Beginning with the construction of the Sears Roebuck & Company plant in November, 1912, industrial businesses and establishments of divers kinds have,

from year to year, been located and built in said industrial district (R. 286-289, 1267). At present there are approximately 100 such heavy and light industries in said district (Def. Ex. 9, R. 702; R. 286). From their inception all of said industries have needed railroad service, and they have been served by one or more of said tracks (R. 286-289, 435, 418).

16. From the time of the respective establishment of said industries, they have all been served, and are now being served, exclusively, by the plaintiff by means of said tracks, with the consent of North Kansas City Development Company (R. 294, 462, 465; Def. Ex. 9, R. 659 at 712, 737).

17. All of the private industrial tracks, by means of which said industries are served, in said industrial district, are connected with said lead tracks, and all of said lead tracks are connected with the tracks of the plaintiff, and with no other railroad (Pl. Ex. 1, R. 263; Def. Ex. 9, R. 659 at 697, 737, 739-741; R. 257-262, 293-294, 463). Plaintiff has the corporate power, capacity, equipment, and facilities to operate over all of said switching lead tracks and thereby serves all said private industrial tracks and industries; and plaintiff has operated all of said tracks, and over the same, exclusively, since the respective dates of their construction (R. 294, 462, 465; Def. Ex. 9, R. 659 at 712, 737).

18. The territory, in which the right of ways and tracks sought to be condemned are located, is situated in said angle so formed by the main lines of railroad of the plaintiff (R. 255-256; Pl. Ex. 1, R. 263) and is immediately contiguous, adjacent and tributary to said lines of railroad of the plaintiff, and is not adjacent, contiguous, or tributary to the line of railroad of any other railroad company or common carrier (Pl. Ex. 1, R. 263; R. 256-262, 293-294).

19. Each of the right of ways and each of the tracks thereon sought to be condemned in this cause, with respect to plaintiff's said railroads, are spur, industrial, team, switching, and side tracks, located wholly within the State of Missouri (R. 257-262, 294, 295, 462).

20. The tracks sought to be condemned do not constitute a single railroad unit (R. 294, 463); but consist of a collection of isolated industrial tracks, which are not now and never have been, and cannot be, operated as a unit (Def. Ex. 9, R. 659 at 739-741; R. 256-262, 294, 462-463; Pl. Ex. 1, R. 263); said industrial tracks are connected only with the tracks of plaintiff (Def. Ex. 9, R. 659 at 739-741; R. 257-262, 294, 462).

21. Beginning in March, 1913, and at all times since, plaintiff has filed and published tariffs and schedules of rates, as required by law, for the switching of freight and property over said tracks; and all freight and property which has been switched or moved over said tracks has been switched and moved by the plaintiff under said tariffs and schedules (Bridge Co. Ans., R. 38 at 42; Pl. Exhs. 6 and 7, R. 297-321; R. 464). No tariffs or schedules have ever been filed or published by any company or carrier other than the plaintiff, for movement upon or over any of said tracks (R. 296-297).

22. Neither North Kansas City Development Company, nor North Kansas City Land and Improvement Association, nor Union Depot, Bridge and Terminal Railroad Company (afterwards called North Kansas City Bridge and Railroad Company) ever devoted any of the right of ways, tracks, or property sought to be condemned to public use (R. 296-297, 417, 462).

23. Plaintiff is now devoting, and in the future will continue to devote, the properties herein sought to be condemned to public use (Def. Ex. 9, R. 712, 729, 731, 737; R. 294-295, 462, 465).

24. It is necessary that plaintiff acquire by condemnation the properties herein sought to be condemned (R. 295, 463-464).

25. Plaintiff's Board of Directors has duly authorized condemnation of the properties herein sought to be taken (Def. Ex. 9, R. 659 at 711; Pl. Pet., Par. 11, R. 29; Bridge Co. Ans., Par. 10, R. 44).

26. The lands herein sought to be condemned (being those described in plaintiff's petition) are in the actual possession of North Kansas City Development Company, North Kansas City Land and Improvement Association, Hugh J. Curran, Frederick W. Fratt, and Clara M. Fratt, each of whom claims title to divers parcels thereof, all subject, however, to the exclusive right of the plaintiff to operate thereon the tracks sought to be condemned. North Kansas City Development Company, North Kansas City Land and Improvement Association, Hugh J. Curran, Frederick W. Fratt, and Clara M. Fratt have title of and to all of said lands, appearing of record upon the proper records of Clay County, Missouri, except that the title to a part of said lands appears of record upon said records in the name: North Kansas City Bridge and railroad Company (Pl. Ex. 1, R. 263; R. 281, 294, 322-323, 449, 417; Def. Ex. 9, R. 659 at 722, 773-775, 930; R. 1485-1486, 1490-1491, 1845; Def. Vice President and General Manager Zimmer, R. 1663-1667).

27. The tracks herein sought to be condemned are located on the strips of land above referred to. All of said tracks are owned by the North Kansas City Development Company (Def. Ex. 9, R. 659 at 791-793; Pl. Ex. 1, R. 263; R. 256, 293-294; Ex. 16, R. 405 at 409-412; Def. Ex. 9, R. 659 at 790 and 792; R. 447-449, 411, 1485-1486, 1490-1491, 1845; Def. Vice President and General Manager Zimmer, R. 1663-1667).

28. Plaintiff has been and is unable to agree with the owners of the properties herein sought to be condemned upon the proper compensation to be paid for said properties (Pl. Pet., R. 29; Def. Ans., R. 34-35, 37, 44; R. 322-324, 321).

29. The greater part of all freight traffic, by railroad, moving to and from said industries moves in interstate commerce (Def. Ex. 9, R. 659 at 713, 731; R. 429).

30. The Union Depot, Bridge and Terminal Railroad Company (later called North Kansas City Bridge and Railroad Company) never owned or operated any railroad tracks, railroad locomotives, cars, rolling stock, or railroad equipment of any kind; never had any switch crews, engine crews, trainmen or railway employees of any kind, or any supervisory officers for handling railroad traffic; never filed or published any tariffs or schedules of rates for the transportation of property or passengers; never made any reports to the I. C. C.; never made any deductions from wages of employes or returns or reports or payments, or paid any taxes, under the Federal Railroad Retirement Act or the Federal Carriers Taxing Act; never made any reports, returns, deductions, payments, or contributions under the Federal Railroad Unemployment Insurance Act; never made any application to the I. C. C. or to the Public Service Commission of Missouri for authority to construct or lease any railroad; never made any application to the I. C. C. or to the Public Service Commission of Missouri for authority to issue any securities or evidence of indebtedness, or to make any borrowings; never issued any bills of lading; never transported any freight or property and never sold or issued any tickets for passage by steam railroad; never transported any passengers in that manner; never made reports of accidents to either the I. C. C. or the Public Service Commission of Missouri; and never took action of any kind under the Federal Railway Labor Act (Def. Ex. 9, R. 659 at 753-754, R. 296-297).

31. None of the tracks or right of ways sought to be condemned were described in the Articles of Association of Union Depot, Bridge and Terminal Railroad Company (Def. Ex. 9, R. 659 at 747-751, 757; R. 283, 290-292, 296); nor do any of said tracks connect with any tracks described in said articles, nor with the bridge or depot described therein (compare Pl. Ex. 1, R. 263, which shows the condemned tracks, with Pl. Ex. 3, R. 279, which shows the chartered route of the Bridge Co.; R. 294; Def. Ex. 9, R. 659 at 757).

32. On or about May 17, 1921, North Kansas City Development Company and plaintiff entered into a contract whereby said Development Company granted to the plaintiff the exclusive right to operate over all of the tracks sought to be condemned (Def. Ex. 11, R. 1007-1009; Pl. Ex. B-1, R. 1445 at 1447; R. 465, 1490-1491, 1845, 1803, 1805), which contract was never authorized by the Missouri Public Service Commission (Def. Ex. 11, R. 1007-1009; R. 297).

33. The plaintiff and its officers had no actual knowledge and were not actually aware, until a short time before the commencement of this cause, that the corporate existence and powers of Union Depot, Bridge and Terminal Railroad Company (afterwards called North Kansas City Bridge and Railroad Company) had ceased (R. 459-460, 638-642, 960, 999-1000, 1245-1246).

34. The knowledge, and opportunities for knowledge, of all facts affecting the status of Union Depot, Bridge and Terminal Railroad Company (afterwards called North Kansas City Bridge and Railroad Company) as a corporation, at all times were equally open to all parties to this cause; and no acts, conduct or representations of the plaintiff ever misled any party to his, her, or its injury, or otherwise (Def. Ex. 9, R. 659 at 747-751, 753-754, 757, 712, 737; Pl. Ex. 4, R. 269-275; R. 283, 290-292, 294, 296, 462, 465).